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AND
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FILED
FEB 27 2017
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 16-405

IN THE

Supreme Court of the United States

BNSF RAILWAY COMPANY,

Petitioner,

v.

KELLI TYRRELL, as Special Administrator for the Estate of Brent T. Tyrrell; and ROBERT M. NELSON,

Respondents.

On Writ Of Certiorari To The Supreme Court Of Montana

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED
SEPTEMBER 28, 2016
CERTIORARI GRANTED JANUARY 13, 2017

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The following documents have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the petition for a writ of certiorari:

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Office of the Clerk of the Supreme Court

ED SMITH
CLERK

PUBLIC VIEW DOCKET

Case Information

Case Number: DA 14 140825
Jurisdiction: Supreme Court
Original Court: Yellowstone County District Court
Case Type: Direct Appeal – Personal Injury/Death
Short Title: Tyrrell & Nelson v. BNSF
Full Title: KELLI TYRRELL, as Special Administrator for the Estate of BRENT T. TYRRELL (deceased), Plaintiff and Appellee, v. BNSF RAILWAY CO., a Delaware corporation, Defendant and Appellant.
ROBERT M. NELSON, Plaintiff and Appellant, v. BNSF RAILWAY CO., a Delaware corporation, Defendant and Appellee.
Citation: 2016 MT 126
Case Filing Date: 12/31/2014
Origination Court Case Number: DV 14-0699

Appellate Role	Party Name	Comment	Attorney(s)
Appellant	BNSF Railway Company	--	Randy J. Cox, Michelle T. Friend, Jesse Myers, Jeffrey Wayne Hedger,

Appellate Role	Party Name	Comment	Attorney(s)
			Jaclyn S. LaFerriere,
			Chad M. Knight,
			Cash K. Parker,
			Anthony Michael Nicastro,
			Scott M. Stearns
Appellee	Kelli Tyrrell	--	Fredric A. Bremseth,
			Keith Edward Ekstrom
Appellee	Robert M. Nelson	--	Bob Fain,
			Christopher Moreland

Register of Action

Document Description	Filing Date
Notice - Incoming - U.S. Sup. Ct. Cert. Filed	10/03/2016
* * *	
Event – Case Closed	06/16/2016
Notice – Outgoing – Opinion Release Notice Issued	06/16/2016
Notice – Outgoing – Remittitur Issued	06/16/2016
Notice of Corrected Opinion.	06/07/2016
Opinion – Published (Justice Shea; Affirmed in part, reversed in part, and remanded. Justice McKinnon dissenting)	05/31/2016
Letter from Boone Karlberg (Randy J. Cox) regarding notice of supplemental authority. copies to Court.	05/06/2016
Notice – Incoming - BNSF's Supplemental Authority – copies to Court	04/25/2016
Notice – Incoming - Tyrell/Nelson Supplemental Authority copies to Court	04/25/2016
Notice – Incoming - BNSF's Supplemental Authority – copies to Court	04/19/2016

Notice – Incoming - BNSF's Supplemental Authority (copies to court)	02/19/2016
Event – Oral Argument Presented by Randy Cox for the appellant and Christopher Moreland for the appellee. The matter was taken under advisement at 10:45 a.m.	12/09/2015
* * *	
Brief – Appellant Reply	09/11/2015
Brief – Amicus (Montana Chamber of Commerce)	07/31/2015
* * *	
Brief – Appellee's Response	07/15/2015
* * *	
Brief – Appellant's Opening	04/15/2015
Order – Consolidating Cases and setting briefing schedule (BNSF's Opening Brief – April 15, 2015; Nelson/Tyrrell's Consolidated Answer Brief June 15, 2015; BNSF's Reply Brief June 29, 2015)	03/03/2015
Motion – Unopposed – Consolidate and for Briefing Schedule sent to Court w/SC File	03/03/2015
* * *	
Order – this appeal shall proceed in accordance with the Montana Rules of Appellate Procedure.	01/13/2015

Event – Sent to Court – Pleading (notice of appeal with Rule 54(b) certification)	01/05/2015

* * *

Notice – Incoming – Notice of Appeal with Rule 54(b) Certification.	12/31/2014

Yellowstone County District Court
Case Register Report
DV-56-2011-0000417-PI
Robert M Nelson vs. BNSF Railway Company

Filed: 3/10/2011
Subtype: Personal Injury/Death

Status History

Open	3/10/2011
Closed	11/21/2014
Remanded to other court	6/21/2016
Appeal remanded from Supreme Court	6/21/2016
Reopened	6/21/2016
Inactive	1/26/2017

Plaintiffs

Pl. no. 1 Nelson, Robert M

Attorneys

Young, Chris R.	(No longer on case)	Do Not Send Notices
Ingebritson, Russell A.	(No longer on case)	Do Not Send Notices
Fain, Bob	(Primary attorney)	Send Notices

Defendants

Def. no. 1 BNSF Railway Company

Judge History

Date	Judge	Reason for Removal
3/10/2011	Baugh, G. Todd	Retired
1/8/2015	Souza, Rod	Current

Register of Actions

Doc. Seq.	Filed	Text	Judge
1	03/10/2011	Complaint and Jury Demand	Baugh, G. Todd
2	03/10/2011	Summons Issued: (BNSF Railway Company) (R&F 02/28/2014)	Baugh, G. Todd
		* * *	
6	02/28/2014	Service of Summons (02/27/2014)	Baugh, G. Todd
7	03/20/2014	BNSF's Motion To Dismiss For Lack Of Personal Jurisdiction And Brief In Support	Baugh, G. Todd
		* * *	
11	04/15/2014	Plaintiff's Response To Defendant's Motion To Dismiss	Baugh, G. Todd
		* * *	
18	05/15/2014	FAX COPY: BNSF's Reply Brief In Support Of Its Motion To Dismiss For Lack Of Personal Jurisdiction	Baugh, G. Todd

19	06/27/2014	Plaintiff's Motion For Permission To File Supplemental Brief To Plaintiff's Response To Defendant's Rule 12(b)(2) Motion To Dismiss Or Set Briefing Schedule Relative Thereto	Baugh, G. Todd
20	06/27/2014	Plaintiff's Supplemental Memoranda Regarding The Commerce Clause And/Or Request For Briefing Schedule	Baugh, G. Todd
21	07/11/2014	Defendant's Response To Plaintiff's Motion For Permission To File Supplemental Brief	Baugh, G. Todd
22	11/13/2014	BNSF's Request for Statement of Damages	Baugh, G. Todd
23	11/20/2014	Memorandum and Order (Def's motion GRANTED case Dismissed)	Baugh, G. Todd
24	12/02/2014	Defendant BNSF Railway Company's Notice of Entry of Order	Baugh, G. Todd

25	12/31/2014	***EMAIL COPY***Notice of Appeal (Replaced with Original 01/02/15)	Souza, Rod
		* * *	
27	06/21/2016	Supreme Court Opinion	Souza, Rod
28	06/21/2016	Supreme Court Remittitur (Affirmed in Part, Reversed in Part, and Remanded)	Souza, Rod
29	01/18/2017	Defendant BNSF's Motion to Stay Brief in Support	Souza, Rod
30	01/25/2017	Plaintiff's Response to BNSF's Motion to Stay	Souza, Rod
31	01/26/2017	Order (RE: All Proceedings Are Stayed)	Souza, Rod

Yellowstone County District Court
Case Register Report
DV-56-2014-0000699-PI
Kelli Tyrrell, Ad Estate of Brent Tyrrell vs. BNSF Railway Company

Filed: 5/19/2014
Subtype: Personal Injury/Death

Status History

Open	5/19/2014
Remanded to other court	6/21/2016
Appeal remanded from Supreme Court	6/21/2016

Plaintiffs

Pl. no. 1 Kelli Tyrrell, Ad Estate of Brent Tyrrell,

Attorneys

Bremseth, Fredric A	(Primary attorney)	Send Notices

Defendants

Def. no. 1 BNSF Railway Company

Attorneys

Parker, Cash K	(Primary attorney)	Send Notices

Judge History

Date	Judge	Reason for Removal
5/19/2014	Gustafson, Ingrid	Substituted
7/7/2014	Moses, Michael G.	Current

Register of Actions

Doc. Seq.	Filed	Text	Judge
1	05/16/2014	Complaint and Jury Demand	Gustafson, Ingrid
2	05/19/2014	Summons Issued:	Gustafson, Ingrid
3	07/02/2014	FAX COPY: Defendant's Rule 12(b)(2) Motion to Dismiss For Lack of Personal Jurisdiction Original received 7/7/14	Moses, Michael G.
4	07/07/2014	Defendant's Corporate Disclosure Statement	Moses, Michael G.
		* * *	
8	07/21/2014	Plaintiff's Memorandum of Law in Opposition to Defendant's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction	Moses, Michael G.
9	07/24/2014	Affidavit fo [*sic*] Fredric A. Bremseth	Moses, Michael G.

10	08/07/2014	Defendant's Reply to Plaintiff's Memorandum of Law in Opposition to Defendant's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction	Moses, Michael G.
11	10/08/2014	Order Denying Defendant's Rule 12(b)(2) Motion To Dismiss For Lack of Personal Jurisdiction	Moses, Michael G.
12	10/21/2014	FAX COPY: Answer, Affirmative Defenses, and Jury Demand (Original filed 10/27/14)	Moses, Michael G.

13	10/21/2014	FAX COPY: Defendant's Combined Rule 54(b) Motion to Certify this Court's Order Denying Defendant's 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction as a Final Judgment and Brief in Support (Original filed 10/27/14)	Moses, Michael G.
		* * *	
15	10/28/2014	Order Clarifying this Court's Order Denying Defendant's Rule 12(b)2 Motion	Moses, Michael G.
		* * *	
17	11/18/2014	Order Granting Defendant's Rule 54(b) Motion to Certify This Court's Order Denying Defendant's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction as a Final Judgment	Moses, Michael G.

18	11/18/2014	FAX COPY: Brief in Opposition to Defendant's Motion to Certify Order Denying Defendant's Rule 12 Motion to Dismiss	Moses, Michael G.
19	12/01/2014	Defendant's Rule 7(d) Notice of Entry of Order Granting Defendant's Rule 54(b) Motion to Certify this Court's Order Denying Defendant's Rule 12(b)(2) Motion to Dismiss for Lack of Personal Jurisdiction as a Final Judgment	Moses, Michael G.
20	12/31/2014	Notice of Appeal	Moses, Michael G.
		* * *	
22	06/21/2016	Supreme Court Opinion	Moses, Michael G.
23	06/21/2016	Supreme Court Remitittur (Affirmed in Part, Reversed in Part, and Remanded)	Moses, Michael G.

CLERK OF THE DISTRICT COURT
CAROL MUESSIG
2011 MAR 10 PM 2 27
FILED
BY _____
DEPUTY

* * *

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY**

****

ROBERT M. NELSON, Plaintiff, vs. BNSF RAILWAY COMPANY, a Delaware corporation, Defendant.	***Cause No.*** DV-11-0417 ***Judge*** G. TODD BAUGH **COMPLAINT AND JURY DEMAND**

****

COMES NOW the Plaintiff, Robert M. Nelson, by and through counsel and for his cause of action against the Defendant, BNSF Railway Company (BNSF), alleges as follows:

1. This is an action arising under the Federal Employers Liability Act, 45 U.S.C. Section 51, et seq., to recover damages for personal injuries sustained by

Plaintiff while employed by Defendant and while engaged in interstate commerce.

2. Defendant BNSF Railway Company is, and at all relevant times herein was, a Delaware corporation which operates a railroad system as a common carrier of freight in interstate commerce, and operated said railroad in interstate commerce in the State of Montana.

3. Plaintiff is, and at all relevant times herein was, was a citizen of the state of North Dakota.

4. Plaintiff was employed by the Defendant as a fuel truck driver. At all times material hereto, Plaintiff's employment with Defendant was in furtherance of and in connection with interstate commerce, and by reason thereof the rights and liabilities of the parties were and are governed by the Federal Employers' Liability Act, 45 U.S.C. 51 *et seq* (FELA).

5. On or about March 18, 2008, while working within the course and scope of his employment with Defendant, and in the furtherance of interstate commerce, Plaintiff sustained disabling injuries to his right knee.

6. The above described injuries were approximately caused by negligence of the Defendants and its employees. Such negligence includes, but is not limited to:

a. Failure of Defendant to provide Plaintiff with a safe place to work;

b. Failure of Defendant to provide Plaintiff adequate and efficient equipment, machinery, and tools to satisfactorily perform the duties of his employment;

c. Failure of Defendant to provide Plaintiff with adequate personnel to safely perform the duties of this employment;

d. Failure of Defendant to observe to its safety and general rules.

7. Prior to his injuries, Plaintiff was a strong, able-bodied man capable of performing the full range of duties associated with his employment. As a direct and proximate result of Defendant's negligence, Plaintiff has lost wages and has suffered a loss of earning capacity.

8. As a further direct and proximate result of Defendant's negligence, Plaintiff has experienced pain and suffering, has incurred medical expenses and has suffered a loss of ability to pursue an established course of life. Plaintiff will continue to incur such damages and experience pain and suffering and other general damages in the future.

WHEREFORE, Plaintiff, Robert M. Nelson, demands judgment against Defendant in an amount to fully compensate him for all recoverable damages, together with costs and disbursements incurred herein, and for such other and further relief as the Court deems just and proper.

Plaintiff demands a trial by jury.

DATED this 8th day of March, 2011.

/s/
CHRIS R. YOUNG

EXHIBIT A TO BNSF'S MOTION TO DISMISS NELSON'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION

BNSF RAILWAY

EMPLOYEE PERSONAL INJURY/OCCUPATIONAL ILLNESS REPORT

Each employee reporting an injury, condition or occupational illness on duty and/or on property must fill out this report and provide it to his or her supervisor (pursuant to § 225.19). A copy will be provided upon request.

NAME OF REPORTING PERSON	AGE	DATE OF BIRTH	SOCIAL SECURITY NUMBER	EMPLOYEE ID NUMBER
Robert M. Nelson	*47*	*[REDACTED]*	*6-29-98*	*1356964*

ADDRESS OF REPORTING PERSON (STREET, CITY, ZIP CODE)			TELEPHONE NUMBER
[REDACTED]	*Valley City,*	*ND 58072*	*[REDACTED]*

JOB TITLE OF EMPLOYEE (CITY AND STATE)	UNIT POST (IF APPLICABLE)	SUBDIVISION (IF APPLICABLE)	DATE OF INJURY	TIME
Centennial, WA	*32*	*Seattle*	*3-18-08*	*5:30* ☒ AM ☐ PM

HOURS WORKED	WEATHER (check correct response)		WAS TRACK (Check correct response)	
40	☐ RAIN ☐ SNOW ☒ FAIR ☐ SLEET			☐ CLEAR ☒ RAIN ☐ SLEET ☒ FOG ☐ SNOW ☐ ICE

IF THIS IS A CUMULATIVE OCCUPATIONAL ILLNESS OR INJURY, WHEN DID YOU FIRST NOTICE SYMPTOMS? | WHEN WERE YOU FIRST TREATED FOR THIS CONDITION?

DESCRIBE FULLY HOW INJURY OR ILLNESS occurred (attach additional pages if necessary)

Right knee popped Clicks when walking

DESCRIBE DUTY YOU WERE PERFORMING AT THE TIME OF INJURY OR ILLNESS (attach additional pages if necessary)

Fueling cranes the crane Bullcat [sic] rolled out from under foot

WAS THE ACCIDENT CAUSED BY THE CONDITION OF EQUIPMENT? | IF YES, PLEASE DESCRIBE

☐ YES ☒ NO

COULD ANY EQUIPMENT HAVE PREVENTED YOUR INJURY? | IF YES, HOW?

☐ YES ☒ NO

WAS THERE ANY PERSONAL VIOLATION OF RULES, INSTRUCTIONS OR WORK PROCEDURES? | IF YES, PLEASE DESCRIBE

☐ YES ☒ NO

TYPE OF MEDICAL ATTENTION RECEIVED (PRESCRIPTION, HOME, SURGERY, ETC.)

GIVEN BY (HOSPITAL, ETC.) | ADDRESS

NAME OF ATTENDING PHYSICIAN | ADDRESS

SUPERVISOR'S NAME	NOTE – If you do not receive medical treatment as the result of this injury or occupational illness, you must promptly notify your supervisor.
RDO/ Jack Rippllinger	• If you experience any complications resulting from your injury/illness • If you are unable to perform your normal duties or absent yourself from your regular assignment because of this injury/illness • Before visiting a health care professional for subsequent treatment or consultation due to your injury

Tie Crane - 06000275

INDICATE IF THERE ARE ANY WITNESSES TO THIS INJURY OR ILLNESS AND GIVE THEIR NAMES AND ADDRESSES

NAME	ADDRESS	TELEPHONE NUMBER (Home and Cell)

Signed | Date

5-19-08

PLEASE ANSWER ALL QUESTIONS TO THE BEST OF YOUR ABILITY.

[Original document available in handwritten and unredacted form in the state court record]

CLERK OF THE DISTRICT COURT
KRISTIE LEE BOELTER
2014 MAY 16 PM 2 14
FILED
BY __ __
DEPUTY

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

KELLI TYRRELL, as Special Administrator for the Estate of BRENT T. TYRRELL (deceased),	Case No. DV 14-0699
Plaintiff,	Judge INGRID GUSTAFSON
v.	
BNSF RAILWAY COMPANY, a Delaware corporation,	**COMPLAINT AND JURY DEMAND**
Defendant.	

COMES NOW Plaintiff Kelli Tyrrell, as Special Administrator for the Estate of Brent T. Tyrrell (deceased), by through her attorneys, for her Complaint against Defendant BNSF Railway Company states and alleges as follows:

I.

The jurisdiction of this Court is founded upon Title 45, Sections, 1-60 of the United States Code, the Federal Employers' Liability Act of the United States, commonly known and referred to as the "FELA." The proper venue for this case is Yellowstone County, pursuant to MCA 25-2- 122(2)(c).

II.

Kelli Tyrrell was appointed as Personal Representative for the Estate of Brent T. Tyrrell by Minnehaha County, South Dakota, 2nd Judicial Circuit Court on December 18, 2012.

III.

At all times material hereto, Defendant BNSF Railway Company, hereinafter referred to as Defendant, has been a corporation duly organized, created and existing under and by virtue of the laws of the State of Delaware, and as such has been engaged in the business of owing [*sic*], maintaining and operating a line and system of railroad which extended in part through the State of Montana.

IV.

At all times material hereto, Defendant has been a common carrier engaged in interstate transportation and commerce and the Decedent, Brent T. Tyrell, at the time of his injuries, was employed by Defendant as its servant and employee and working in interstate transportation and commerce.

V.

That over the course of his career with the BNSF, and while working within the scope of his employment with Defendant, Decedent was exposed to various carcinogenic chemicals including but not limited to, diesel fuel products and diesel fuel combustion, polycyclic aromatic, hydrocarbons, solvents, benzene, creosote, asbestos, silica, oils, brake cleaner, industrial degreasing chemicals, perchloroethylene, trichloroethylene, herbicides, chlorinated solvents, and other industrial and railroad related chemicals harmful to his health,

which caused him severe suffering and premature death.

VI.

Defendant, its agents, officers and employees were negligent and careless, and that this conduct violated the Federal Employers' Liability Act, the Locomotive Inspection Act, Federal Railroad Administration Regulations, and other safety statutes and regulations enacted pursuant to law as for the protection of railroad employees, and that said actions were responsible for Decedent's injuries and death.

VII.

That Decedent developed Renal Cell Carcinoma as a direct result of Defendant's negligence.

VIII.

That Decedent died on September 11, 2011 as a direct result of the kidney cancer caused, in whole or in part, from said occupational exposure. Thereafter, his Widow, Kelli Tyrrell was appointed as personal representative. As such, Plaintiff, Kelli Tyrrell brings this action individually and on behalf of the heirs of Decedent.

IX.

That as a result of Defendant's conduct, the heirs of Brent T. Tyrrell have suffered economic and non-economic damages, for which the personal representative is seeking recovery.

WHEREFORE, Plaintiff Kelli Tyrrell as special administrator of the estate of Decedent, Brent T. Tyrrell prays for judgment against Defendant BNSF Railway Company in an amount according to proof, together with his costs and disbursements incurred

herein, interest on any judgment entered as allowed by law, and such other and further relief as the Court deems just.

PLAINTIFF DEMANDS TRIAL BY JURY.

Dated: 4/16/14

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY

ROBERT M. NELSON,	Cause No. DV 11-0417
Plaintiff,	Judge G. TODD BAUGH
v.	
BNSF RAILWAY COMPANY, a Delaware corporation,	**AFFIDAVIT OF JAMES OBERMILLER**
Defendant.	

I, James Obermiller, of lawful age and, upon his oath deposes and says:

1. I am employed as a Director - Corporate Support and Compliance for BNSF Railway Company. I make this affidavit in support of BNSF's Motion to Dismiss for Lack of Personal Jurisdiction.

2. I began my employment with Burlington Northern Railroad Company, now known as BNSF Railway Company, ("BNSF"), in 1993 and since 2006 I have held the position of Director - Corporate Support and Compliance. In that capacity, I serve as the custodian of records of BNSF Railway Company and am responsible for Records Management for BNSF.

3. This affidavit is based on my personal knowledge as well as my review of business records and documents of BNSF to which I have access or with which I am independently familiar.

4. The statements contained herein are based upon BNSF operations in 2013. To the best of my knowledge, BNSF's operations remain consistent

with the 2013 summaries and statistics provided herein.

BNSF IS "AT HOME" IN TEXAS

5. BNSF provides freight transportation on an interstate rail system.

6. BNSF's principal place of business is Fort Worth, Texas. BNSF is organized under the laws of Delaware.

7. BNSF's corporate headquarters are located in Fort Worth, Texas.

8. BNSF's corporate officers are located in Texas.

9. BNSF's principal officers all maintain their offices in Fort Worth, Texas, including BNSF's:

a. Executive Chairman;

b. President and Chief Executive Officer;

e. Executive Vice President and Chief Marketing Officer;

d. Executive Vice President, Operations;

e. Executive Vice President, Law and Corporate Affairs; and

f. Executive Vice President and Chief Financial Officer.

10. BNSF has a central Network Operations Center in Texas, which provides train dispatching and network operations monitoring.

11. BNSF's various department headquarters that manage the company are all located in Fort Worth, Texas, including:

a. BNSF's Human Resources Department.

b. BNSF's Marketing Department.

c. BNSF's Law Department.

d. BNSF's Engineering Department.

e. BNSF's Finance Department.

f. BNSF's Labor Relations Department.

g. BNSF's Corporate Relations Department.

h. BNSF's Mechanical Department; and

i. BNSF's Claims Department.

12. BNSF's total rail system consists of 32,500 miles of rail trackage in 28 U.S. states and 2 Canadian Provinces.

13. Out of its operations nationwide, BNSF generates the most revenues from its business in Texas.

14. BNSF has more rail trackage in the State of Texas than any other state in the BNSF rail system.

15. BNSF's highest concentration of employees is in the State of Texas. BNSF employs 43,000 people system-wide in 28 U.S. States and 2 Canadian Provinces. Of those 43,000 employees, 8,472 employees — or approximately 20% of BNSF's total workforce — are employed in the State of Texas.

16. BNSF owns and operates 24 Automotive Facilities in 16 different states, with 4 of these facilities — or approximately 17% — being located in the State of Texas.

17. BNSF owns and operates 28 Intermodal Facilities in 16 different states, with 3 of these facilities — or approximately 11% — being located in the State of Texas.

18. BNSF owns and operates 8 Port Facilities in 4 U.S. States and 1 Canadian Province.

19. BNSF considers itself a corporate resident of the State of Texas, conducts its business operations accordingly, and holds itself out as having its headquarters in Fort Worth, Texas.

BNSF'S CONTACTS WITH MONTANA COMPARED TO BNSF OPERATIONS NATIONWIDE

20. BNSF's rail trackage in the State of Montana totals 2,061 miles, or 6% of its total rail system.

21. Only 1 of BNSF's Automotive Facilities, or 4% of the total number of such facilities, is located in the State of Montana.

22. There are 4 other states that have 2 or more BNSF Automotive Facilities, including Washington, California, Minnesota, and Texas.

23. None of BNSF's 28 Intermodal Facilities is located in the State of Montana.

24. None of BNSF's 8 Port Facilities is located in the State of Montana.

25. BNSF employs 2,112 people in the State of Montana, which is less than 5% of BNSF's total workforce. BNSF employs approximately four times as many people in Texas than it does in Montana.

26. None of BNSF's principal corporate officers described in paragraph 12 above have ever maintained offices in the State of Montana.

27. None of BNSF's Department headquarters, responsible for managing the company, have ever been located in the State of Montana.

28. No BNSF central train dispatching or network operations monitoring facilities have ever been located in the State of Montana.

29. BNSF has never been incorporated under the laws of the State of Montana.

30. Montana revenue constitutes less than 10% of BNSF's total revenue.

I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

05/15/2014 Ft. Worth, TX /s/ _____

Date and Place James Obermiller

AFFIDAVIT OF BRUCE G. GLOVER

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

I, Bruce G. Glover, hereby state under oath as follows:

1) My name is Bruce G. Glover. I am the current elected General Chairman of the Brotherhood of Maintenance of Way Employes, (BMWED) Burlington Northern System Federation. My primary area of representation responsibility is the BNSF northern corridor. I also have responsibility for the representation of Maintenance of Way track workers, bridge and building workers and machine operators employed by Montana Rail Link. I have been a member of BMWED since 1974 and have been General Chairman since 1988. Prior to my election as an Officer of BMWED I was employed by BNSF in its Bridge and Building Department with a seniority date of September 16, 1974.

2) As General Chairman, I have many responsibilities with much of my work time dedicated to contract administration to ensure that BNSF adheres to its contractual obligations under its Labor Agreements. But, there is no more important aspect of my responsibilities than to insist and require BNSF provide BMWED Members, including these plaintiffs, with a safe place to work in every respect. I am personally involved in many aspects of BNSF safety programs which include examination of the work place,

equipment, conditions, activities, practices and management of the work place by BNSF. I coordinate these many responsibilities with my counterpart colleagues who represent BNSF BMWED Members specifically including General Chairwoman Stacy Moody-Gilbert on the Central Corridor and General Chairman Gary Marquart on the Southern Corridor. Our work is intermingled because of the need for uniformity across the BNSF system in both contract administration and issues related to safe· places to work. Railroad companies like BNSF operate in many states and decisions and actions taken in one state affects the work practices and safety in other states. This is also true of decision and actions taking place in the State of Montana.

In addition to my work under the Railway Labor Act, I also interact frequently with the application and use of FELA and its practitioners as an important and vital accountability mechanism to enhance the safety of the work place. Montana courts and BMWED Members access to them has been a vital and indispensable factor in ensuring that BNSF track workers and other employees have as safe workplace as possible.

3) As General Chairman, of the Burlington Northern System Federation I represent Maintenance of Way Members employed by BNSF across many states including, but not limited to: Minnesota, Wisconsin, Iowa, South Dakota, North Dakota, Montana (both north and south lines), Idaho, Washington, Oregon and California. In addition, I and my colleagues on the two other BNSF rail corridors act jointly in many issues within and without Montana because decisions

and actions taken in Montana have a direct bearing on decisions and actions taken by BNSF in other states.

4) I am very familiar with the work practices and conditions of employment associated with Maintenance of Way employees employed by BNSF both within my elective territory and also across the entire BNSF property.

5) Most BMWED members do not have a traditional "work place" as that term is used in other employment settings. BMWED Member's work place very often consists of the entire BNSF rail system. Unlike other sectors of the economy, Maintenance of Way Craft employment by railroad companies like BNSF is not limited by geographical areas or regions, state lines, or a specific localities or places of residence. As example, in 2014 approximately 50 large "production gangs" (like mobile assemble lines) are assigned work schedules that include work in multiple states, some will work around the entire rail system. Several of these gangs will work in Montana. BMWED Members who staff these Gangs will be solicited from all across the entire BNSF rail system. Many BMWED Members from Montana will be required to work across the entire BNSF rail system and many BMWED Members from all around the rail system will work over their career in many states, including the state of Montana. This work is highly transitory.

6) The same is true of the equipment and track machinery utilized in the work activities of BMWED Members, including these plaintiffs. This equipment

frequently is operated in, originates in or is maintained or repaired within one state such as Montana for use in other states across the system. To the extent that these activities are negligently performed, that negligence would occur in part in Montana.

7) Accordingly, although BMWED Members may be a resident of one state, they could be injured either traumatically or over a long period of time in many other states. Similarly, a resident of Montana could be injured traumatically or cumulatively in other states. Likewise, a resident of another state could easily suffer injuries and other occupational injuries in whole or in part within Montana or as a result of decisions and actions taken in Montana. Like the workplace, the injuries and importantly the occupational conditions and diseases of BMWED Members are frequently not defined by specific times and places but rather occur across his entire career in many states.

8) Thus, the workplace for a BNSF Maintenance of Way worker is in fact the 28 states within which the BNSF does business across the United States. Because of Montana's location within the BNSF system, the state of Montana is a central and important part of the BNSF system and is heavily involved in transportation from the east to the west and from the north to the south. BNSF is also a central, important and critical transportation company within Montana's economy and it reaps significant economic benefits from operating within the State of Montana.

9) Accordingly because of the central role which the Montana division of the BMWED plays in the

overall life of a BNSF track worker, BMWED Members including the Members of my colleagues across the United States have a compelling interest in ensuring that the State of Montana establish the highest and safest standards of practice in providing a safe work place for BMWED Members and further that BMWED Members be afforded their long term, historical access to the courts of Montana in the event of work-related injuries, diseases or conditions.

Indeed, in my years of experience, access by BMWED Members to Montana courts have played an indispensable role in helping ensure that BNSF provides BMWED Members, and all other BNSF employees, together with citizens of the State of Montana with the safest workplaces possible and that access has also inured to the benefit of the State of Montana which also has a critical interest in ensuring that the decisions and actions taken by BNSF within and without Montana, remain consistent with Montana's compelling interest in ensuring that BNSF operate safely

The denial of access to the courts of Montana would ignore the inter-connectedness and national character of BNSF operations which affect the interests of BMWED Members and the State of Montana which can result in a less safe workplace and less safe railroad operations within Montana and across the country.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated this 30 day of May, 2014.

/s/ _____
Bruce G. Glover

Subscribed and sworn to before me

this *30th* day of *May*, 2014. [S E A L]

/s/ _____
Notary Public
My Commission Expires: *1/31/19*

SECRETARY OF STATE

STATE OF MONTANA

CERTIFICATE OF AUTHORIZATION

I, Linda McCulloch, Secretary of State of the State of Montana, do hereby certify that on 4 March 1970, this office issued a Certificate of Authority to:

BNSF RAILWAY COMPANY

a foreign corporation organized under the laws of the State or the Province of Delaware, to transact business and conduct affairs in the State of Montana.

I further certify that all fees reflected in the records of the Secretary of State have been paid and that the most recent annual report has been filed with this office.

I further certify that the Certificate of Authority of said corporation has not been revoked and it has not been issued a certificate of withdrawal nor has it caused any notice of dissolution or withdrawal to be placed on record in this office.

I further certify that my records indicate the corporation is in good standing under the laws of the State of Montana and is authorized to conduct its business and affairs in this State.

The Secretary of State cannot certify that tax and penalties owed to this state on record with the Department of Revenue are current. Please contact the Department of Revenue at (406) 444-6900 to obtain information on tax status.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Montana, at Helena, the Capital, this 30 May 2014.

/s/

LINDA MCCULLOCH
Secretary of State

Certified File Number: F007907

BNSF Railway Company
Leased Lines and Wholly-Owned Subsidiaries

Class 1 Railroad Annual Report
To the Montana Public Service Commission
for the Year Ending December 31, 2013

BNSF Railway Company
State Statistics

Notice

The state statistics hereinafter contained are filed pursuant to the direction of the regulatory authorities of the State of Montana. To the extent that such statistics contain allocations to the state, which are in part the result of arbitrary separations or proration, BNSF Railway Company and Burlington Northern Santa Fe LLC do not accept such allocations as reflecting actual operating results for the aforementioned state, and reserve the right to challenge such results in any proceeding in which they may be utilized.

* * * * *

Road Initials: BNSF Year 2013 Montana SC-7

SC-210, RAILWAY OPERATING REVENUES EARNED WITHIN THE STATE
(Dollars in Thousands)

Code	Description	On Intrastate Traffic	On Interstate Traffic	Total
101	Freight	5,829	1,723,600	1,729,429
102	Passenger			
104	Switching	77	88	165
106	Demurrage	13	3,902	3,915
110	Incidental	1,623	13,919	15,542
121	Joint Facility – Credit	1	257	258
122	Joint Facility – Debit			
502	Transfers from Govt Authorities			
	Total Railway Operating Revenues	7,543	1,741,766	1,749,309

* * * * *

SC-700. MILEAGE OPERATED AT CLOSE OF YEAR – WITHIN THE STATE

				Running Tracks, Passing Tracks, Cross-Overs, Etc.						
Line No.	Class (a)	Proportion owned or leased by Respondent (b)	Main (M) or branch (B) line (c)	Miles of road (d)	Miles of second main track (e)	Miles of all other main tracks (f)	Miles of passing tracks, cross-overs, turnouts (g)	Miles of way switching tracks (h)	Miles of yard switching tracks (i)	Total (j)
1	1	100	M	1,515	123		230	116	73	2,057
2	1	100	B	546			18	23	37	624
3	1	TOTAL	M&B	2,061	123		248	139	110	2,681
4										
5	5		M	17				12		29
6	5		B	34				4		38
7	5	TOTAL	M&B	51				16		67
						* * * * *				
43		Total Main Line		1,532	123		230	128	73	2,086
44		Total Branch Line		580			18	27	37	662
45		Grand Total		2,112	123		248	155	110	2,748
46		Miles of electrified road or track included in preceeding grand total		None						

* * * * *

Road Initials: BNSF Year 2013 Montana
SC-18

SC-931. STATISTICS OF RAIL-LINE OPERATIONS – WITHIN THE STATE				
Line No.	Item (a)	Freight Trains (b)	Passenger Trains (c)	Total Transportation service (d)
1	Average mileage of road operated	2,112		2,112
2	Train-Miles Diesel locomotives	13,389,347		13,389,347
3	Other locomotives			
4	Total locomotives	13,389,347		13,389,347
5	Motorcars			
6	Total train-miles	13,389,347		13,389,347
7	Locomotive Unit-Miles Road service	39,679,599		39,679,599
8	Train switching	754,834		754,834
9	Yard switching	205,162		205,162
10	Total locomotive unit-miles	40,639,595		40,639,595
11	Car-Miles (Thousands) Total motorcar car-miles			
12	Loaded time-mileage freight cars	403,662		403,662
13	Loaded other freight cars			
14	Empty time-mileage freight cars	308,827		308,827
15	Empty other freight cars			
16	Caboose	1		1
17	Total Freight car-miles (lines 12, 13, 14, 15 and 16)	712,490		712,490
18	Passenger coaches			
19	Combination pass cars (mail, express, baggage, etc.)			
20	Sleeping and parlor cars			
21	Dining grill and tavern cars			
22	Head-end cars			
23	Total (lines 18, 19, 20, 21, and 22)			
24	Business cars			
25	Crew cars (other than caboose)			
26	Grand total car miles (lines 11, 17, 23, 24 and 26)	712,490		712,490

	Gross Ton-Miles and Train-Hours in Road Service			
27	Gross ton-miles of locomotives and tenders (thousands)	8,110,048		8,110,048
28	Gross ton-miles frt cars, contents and cabs (thousands)	66,502,224		66,502,224
29	Gross ton-miles passenger cars and contents (thousands)			
30	Train-hours-Total	810.549		810.549
	Revenue and Nonrevenue Freight Traffic			
31	Tons of revenue freight	XX XX XX XX XX XX	XX XX XX XX XX XX	34,784
32	Tons of nonrevenue freight	XX XX XX XX XX XX	XX XX XX XX XX XX	716
33	Total tons revenue and nonrevenue freight	XX XX XX XX XX XX	XX XX XX XX XX XX	35,499
34	Ton-miles-Revenue freight in road service (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	38,808,703
35	Ton-miles-Revenue frt in lake transfer serv (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	
36	Total ton-miles-Revenue freight (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	38,808,703
37	Ton-miles-Nonrevenue frt in road serv (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	362,360
38	Ton-miles-Nonrevenue frt lake transfer serv (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	
39	Total ton-miles Nonrevenue freight (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	352,360
40	Net ton-miles frt-Revenue and nonrevenue (thousands)	XX XX XX XX XX XX	XX XX XX XX XX XX	39,161,083
	Revenue Passenger Traffic			
41	Passengers carried-Total	XX XX XX XX XX XX	XX XX XX XX XX XX	
42	Passenger miles-Total	XX XX XX XX XX XX	XX XX XX XX XX XX	
43	Train-Miles Work Trains Locomotives	246,088		246,088
44	Motorcars			
45	Total	246,088		246,088

Road Initials: BNSF Year 2013 Montana
SC-19

SC-931. STATISTICS OF RAIL-LINE OPERATIONS – WITHIN THE STATE-Concluded State hereunder the car-miles of the respondent within the state by privately owned freight cars and included in the items above given

Item No.	Item	Freight Trains	Passenger Trains	Total Transportation service
	(a)	(b)	(c)	(d)
46	Loaded freight cars	215,945,318		
47	Empty freight cars	101,812,023		
48	Sum of loaded and empty	377,757,341		

INSTRUCTIONS CONCERNING SCHEDULE 931

1. Give the various statistical items called for concerning the rail-line operations of the respondent's road during the year. Train-miles, car-miles and other particulars are to be reported in accordance with the classification of train-miles and car-miles prescribed in the Uniform System of Accounts for Railroad Companies (Mileage Accounts 600 to 605 and 620 to 625). Locomotive unit-miles should include all miles made by each locomotive unit.
2. Time-mileage freight cars, as used herein, refers to freight cars other than cabooses owned or held under lease arrangements by U S. class 1 end-haul railroads, whose interline rentals is settled on a per diem and no-haul basis under "Code of Car Hire Rules" or would be so settled if used by another railroad.
3. Line No. 1 includes miles of road operated under trackage rights.
4. All statistics should be reported in whole numbers unless otherwise indicated in thousands. For gross ton-miles compute from conductors' or dispatchers' train reports weight in tons (2,000 pounds). Line 27 includes weight of all locomotives units moved one mile in tranportation trains. Ton-miles of motorcars should be excluded. Lines 28 and 29 represent tons behind locomotive units (cars and containers, company service equipment and caboose) moved one mile in transportation trains, include ton-miles of exclusive work service equipment and motorcars moving in transportation trains. Use 150 pounds as the average weight per passenger and four tons as the average weight of contents of each head-end car.
5. Line No. 36 should represent the ton-miles of revenue freight in water transfer service on the Great Lakes involving a rail-line haul, the revenue from which is includable in account H 101, which was moved on the basis of lawful local tariff rates, the revenue from which is crediable to account No. 113, "Water transfers," should be excluded. Line 38, Total ton-miles-Revenue freight, should correspond to the ton miles reported on Form 08-B, Item 2.
6. For net ton-miles, Line 40, compute from conductors' train reports. This item represents the number of tons of revenue and non-revenue freight moved one mile in transportation trains, include a reasonable proportion of the freight of exclusive work equipment moved one mile, include net ton-miles in motorcar trains. Exclude LCL shipments handled in [illegible] baggage-express cars.
7. The mileage of company service equipment, designed exclusively for work service and moved in transportation trains, should be classed as loaded freight car-miles.
8. Highway vehicle operations should not be included in Schedule 931 but particulars thereof given in a footnote below.

Footnotes and remarks